IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE EIGHTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION No. 15915 of 2004

Between:

Md.Abdul Moyeed Khan, S/o.M.A.Raqeeb Khan,
R/o.Mallepally, Hyderabad. ..... PETITIONER

AND

1 The Superintending Engineer, Head Quarters circle

(R&B),Hyderabad.
2 Balaji Constructions Srinagar Colony, Hyderabad rep.by its
Managing partner.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ, order or direction more especially in the nature of mandamus declaring the action of 1st respondent in not opening the financial bid of the tender of the petitioner following tender notice No.2/T4/SRHQC/2004 dt.13-08-2004 issued by the 1st respondent and accepting the tender of 2nd respondent who quoted more than the petitioner is illegal, arbitrary, and violative of the provisions of G.O.Ms.No.94 I & CD PW Department, dt.1-7-2003.

Counsel for the Petitioner : Mr.P.UDAYA BHASKARA RAO

Counsel for the Respondent No.1: G.P. FOR ROADS & BUILDINGS

The Court made the following :

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ORDER:

The petitioner herein, who claiming to be a Class-I Contractor both with State and Central Governments and their Undertakings filed this writ petition inter alia seeking writ of mandamus declaring the action of the first respondent in not opening the financial bid of the tender of the petitioner which was filed in pursuance of the Tender Notice dated 13.8.2004 issued by the first respondent and consequently in accepting the tender as submitted by the second respondent which is far higher than the quotations made by the petitioner, is not only illegal, arbitrary, but also violative of G.O.Ms.No.94 I&CD PW Department dated 1.7.2003.

The case of the petitioner in short is that having regard to the tender notice dated 13.8.2004 calling for tenders for the execution of the work namely construction of DEO Building at Government Junior College, Aliya, Hyderabad, the petitioner submitted the tender enclosing all the relevant certificates including the eligibility of financial turnover on 1.9.2004. It is the case of the petitioner that the tender procedure has been laid down by the Government in G.O.Ms.No.94, I & CAD (PW-COD) Department dated 1.7.2003 and G.O.Ms.No.23 I & CAD Department dated 5.3.1999. As per clause 10 of the aforesaid G.Os., the Contractor should have completed similar works of the value not less than 50% of the estimated value of the work in any one year during last five years. Further as per clause 11, the eligibility of financial turnover is a basic one for the purpose of qualifying the bid capacity under 2AN-B Formula. It is also submitted that in terms of clause 2.2(B) of the tender notice and in terms of 2AN-B formula, a person should have completed as Prime Contractor similar nature of works not less than 37,55,000/- in any one financial year during the last five financial years. It is the case of the petitioner that all the certificates, which have been submitted, amply show the eligibility of similar nature of works and financial turnover. It is his further case that during the financial year 2002-2003, he executed civil works of Rs.83,62,451/- and for the financial year 2003-2004, he executed the work worth Rs.42,91,938/-. The petitioner states that along with him, second respondent and nine others submitted the tenders and the authorities have chosen to consider and select the tender of the second respondent and rejected all other tenders. It is the prime contention of the petitioner that having

satisfied with all the required qualifications, the first respondent ought not to have rejected the tender submitted by the petitioner. It is also the case of the petitioner that he submitted relevant experience certificate, which fully satisfies the qualifications as contemplated in the aforesaid G.Os. issued by the Government. Hence, the impugned action on the part of the first respondent in selecting the tender of the second respondent as bad, illegal and void. Hence, the writ petition.

In the counter affidavit filed on behalf of first respondent, it is stated that no doubt, the tender notice was issued on 13.8.2004 by duly publishing in the newspapers and the petitioner has submitted his tender along with certain certificates, however, on a perusal of the same, it is found that he could not fulfill the eligibility/qualification criteria to participate in the tender and therefore he was declared as unqualified and rejected his tender. Reiterating the policy as laid down in regard to the tender as enunciated by the Government in G.O.Ms.No.94 dated 1.7.2003 and G.O.Ms.No.23 dated 5.3.1999, it is stated that the eligibility criteria should be 50% of the estimated value of contract in any one year during the last five financial years. Having regard to the nature of work and the eligibility criteria for similar works, experience in one year is proposed to Rs.37.55 lakhs and the same is incorporated in the tender notice and accordingly the same has made as part of the tender conditions. It is submitted that after opening the tender submitted by the petitioner, the certificates disclose various works as pointed out by him which have been extracted in paras 4(a) to 4(p) individually in respect of all such works as mentioned by the petitioner. However, it is stated that by adopting the formula 2AN-B, the works as mentioned in Clause (a), (b), (c), (g), (k), (l), (m), (n) and (o) do not fall under the category of similar nature and the other works as mentioned though they are in the nature of civil works, which would not go in favour of the required criteria. It is further pointed out that the very same G.O.Ms.No.23 dated 5.3.1999 clarify specifically in respect of similar works to mean that those which are alike to the work in question. It was further contended that the experience certificates produced by the petitioner is not in respect of similar nature of work. Further it is also the case of the first respondent that the petitioner has not satisfied with the tender condition of minimum quantities executed in any one financial year during the last five financial years i.e. from 1998-1999 to 2002-2003, and therefore contends that the petitioner was rightly disqualified for the aforesaid reasons. Hence, there are no merits in the petitioner’s claim as raised in the writ petition and the same is liable to be dismissed.

Heard both sides.

The main crux as put forward on behalf of the petitioner is in regard to the satisfaction of tender conditions vis-à-vis and the qualifications as contemplated therein. It is stated that in support of his claim, petitioner has substantiated his claim by producing necessary certificates. Whereas, it is the case of the respondents that the petitioner did not satisfied with any of those eligibility criteria and therefore his tender has been rightly rejected.

The point for consideration now is as to whether the petitioner falls within the ambit as contemplated under the tender conditions and the policy enunciated by the Government. There is no dispute that in terms of the tender notification issued by the first respondent dated 13.8.2004, petitioner submitted his tender with all the required data, particulars and certificates. The petitioner submits that he is fully qualified and whereas the quotation of the second respondent, whose tender was accepted, would go on higher side, and therefore his case has to be considered in a pragmatic manner. There is also no dispute to the fact that the tender policy has been laid down under G.O.Ms.No.94 dated 1.7.2003 and G.O.Ms.No.23 dated 5.3.1999. There is also no dispute to the fact that the eligibility criteria of not less than 50% of the estimated value of the work in any one year during last five years and complete similar nature of works not less than 37,55,000/- in any one financial year during the last five financial years. It is the case of the respondents herein that the items mentioned in the certificates individually do not fall under the said category of similar nature of works i.e. buildings. It is also their case that the certificates in respect of construction of Ballast Retaining Wall between Secunderabad-Falaknuma Stations from KM 7/19 to 8/4, the proposed construction of boundary wall alongside the Railway track between KM 13/1 to13/15 between Yakutpura and Falaknuma Stations, and construction of boundary wall from KM 15/10 to 15/15 between Falaknuma and Shivrampally Stations do not fall within the category of similar nature of works. Similarly, the work of providing Kota flooring in additional accommodation building at Government Polytechnic, Masab Tank, Hyderabad, the improvements made to Bela-Chaparla road from KM 5/0 to 5/875 in Adilabad district, the improvements made to Bela-Chaparla road from KM 5/875 to 6/750 in Adilabad district, the improvements made to Kapri to Bela via Sangidi from kM 16/2 to 17/2 in Adilabad district, the work of providing Central Median on Pune-Hyderabad Section of NH-9 from KM 532/2 to 532/7, the work of providing BT on R/F Deepaiguda to

Kura via Anandpur, Adilabad district etc., do not come under the similar nature of works. It is also pointed out that the petitioner has not satisfied in respect of the minimum quantities executed in any one financial year during the last five financial years i.e. from 1998-1999 to 2002-2003. Even on a bare reading of the aforesaid certificates and the nature of works involved therein, it cannot be said that they pertain to any building work for which the present tender notice has been issued. Further, it cannot be said that all such works as pointed out in the certificates mentioned above fall within the definition of similar works as contemplated in G.O.Ms.No.23 dated 5.3.1999. The petitioner has not made out any case to show that the experience he has, is similar to that of the work mentioned in the tender notice. Having failed thus, it is not open for the petitioner to seek indulgence of this Court under Article 226 of the Constitution of India. In **RAUNAQ INTERNATIONAL LIMITED v. I.V.R. CONSTRUCTION LTD.**, the Supreme Court held that in case of challenge by an unsuccessful bidder, the Court should not interfere unless substantial public interest is involved or grant is mala fide.

Though a fake allegation is sought to be made in the affidavit for accepting the tender of the second respondent, but however the same was not substantiated by any material support.

Having regard to the facts and circumstances of the case, the petitioner having failed to satisfy the tender conditions and the experience of similar nature of works and the eligibility criteria, he has no locus-standi to maintain this writ petition.

Hence, I do not find any merits in the Writ Petition and the same is, accordingly, dismissed. No costs.

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B.PRAKASH RAO, J.

Dated 8-11-2004.

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To

1 The Superintending Engineer, Head Quarters circle

(R&B),Hyderabad.
2 The Managing Partner, Balaji Constructions Srinagar Colony, Hyderabad.

3 Two CCs to the G.P. for Roads & Buildings, High Court Buildings, Hyderabad (OUT).

4 Two spare copies.